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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	
Requests of Bell Atlantic-NYNEX Mobile, Inc., and US West, Inc., for Waiver of Section 22.903 of the Commission's Rules	)	DOCKET FILE COPY ORIGINAL

COMMENTS OF CMT PARTNERS

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October 3, 1996

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SUMMARY

By these comments, CMT Partners ("CMT") addresses Commission proposals intended to eliminate the Commission's current Part 22 requirement that Bell Operating Companies ("BOCs") must provide cellular service through a structurally separate corporation pursuant to Section 22.903 of the Commission's rules.

The Commission presented two distinct options for streamlining the existing structural separation safeguards. Under the first option, streamlined separate subsidiary provisions governing the provision of cellular service within a BOC's area of operation would remain in place temporarily, but would sunset when the particular BOC at issue receives authorization to provide interLATA service originating in any in-region state. Under the second option, the Part 22 cellular separate subsidiary requirements would be eliminated immediately for in-region cellular services and replaced by certain uniform safeguards that would apply to the provision of PCS service, and potentially all other CMRS service.

CMT compliments the Commission for initiating this rulemaking proceeding. Ultimately, it should foster a truly level playing field for CMRS competition. CMT supports generally the Commission's proposal to retain the structural separation safeguards of Section 22.903 as provided for in Option 1, and to extend those separation requirements to all other broadband Commercial Mobile Radio Service ("CMRS") and Tier 1 Local Exchange Service ("LEC") providers. CMT submits that the most straightforward and persuasive arguments in support of the need for

a continuing requirement for structural separation lie in recent Congressional mandates for structural separation as a condition to BOC entry into certain other competitive communications field, and the Commission's pronouncements in the Notice that certain of the core bases that initially lead to structural separation mandate remain -- or have intensified.

Structural separation enhances regulatory parity and is not only necessary to foster competition but is no more intrusive than a multitude of other Commission requirements that are subject to sunset provisions.

Further, CMT supports the Commission's proposals to limit any joint marketing done on behalf of the separate affiliate, subject to the Commission's affiliate transaction rules and classified as a nonregulated activity, on a compensatory, arms-length basis. The Commission should also implement appropriate measures to guard against the unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services.

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COMMENTS OF CMT PARTNERS

CMT Partners ("CMT"),1/ by its attorneys and pursuant to Section 1.415 of the Commission's rules, respectfully submits its comments in response to the Notice of Proposed Rulemaking in the captioned proceeding.2/ For the reasons set forth below, CMT

1/ CMT is the parent company for four Commission licensees: Bay Area Cellular Telephone Company, Napa Cellular Telephone Company, Cagal Cellular Communications Corporation and Salinas Cellular Telephone Company. Collectively, these entities provide Band A cellular service in the San Francisco, San Jose, Napa, Salinas and Santa Rosa, California. CMT is also the licensee of the following Band A cellular markets in Kansas: Kansas City, Kansas/Missouri MSA and Lawrence, Kansas. CMT is also the parent company of St. Joseph CellTelco which provides the Band A service in the St. Joseph, Missouri MSA.

2/ Notice of Proposed Rule Making, WT Docket No. 96-162 and GEN Docket No. 90-314, 61 Fed. Reg. 46420 (September 3, 1996) ("Notice"). In the Notice, the Commission requested that comments be filed 30 days after Federal Register publication, i.e., by October 3, 1996, 1996, and that reply comments be (continued...)

urges the Commission to retain, for the duration of the sunset period as defined in the Notice, the cellular structural separation provisions that have served well the public interest for over a decade. Equally important, the Commission should extend those separation requirements to all other broadband Commercial Mobile Radio Service ("CMRS") and Tier 1 Local Exchange Service ("LEC") providers. These protections are absolutely the minimum necessary in order to foster genuine wireless competition, as well as competition between wireless and wireline carriers.

I. INTRODUCTORY STATEMENT

By its Notice the Commission initiated a comprehensive review of the existing regulatory framework of structural and nonstructural safeguards for LEC provision of CMRS, with primary focus on cellular and broadband PCS. Notice, at para 1. With respect to cellular, the Commission proposed two options, each of which would eventually eliminate the current requirement, set forth in Section 22.903 of the rules, that Bell Operating Companies ("BOCs") must provide cellular service through a structurally separate entity. 47 CFR §22.903. In so doing, the Commission sought both to respond to a recent remand decision from the 6th Circuit[3/] and to comply with specific provisions in the

2/ (...continued) filed 51 days after Federal Register publication, i.e., by October 24, 1996. Accordingly, these comments are timely filed.

3/ Cincinnati Bell Telephone v. FCC, 69 F 3rd 752 (6th Cir. 1995) ("Cincinnati Bell").

Telecommunications Act of 1996 (governing joint marketing of CMRS and LEC services, and use of CPNI),[4] and the 1993 Budget Act (mandating similar treatment of similarly situated CMRS licensees).[5]

II. **THE COMMISSION'S PROPOSALS**

In its Notice, the Commission presented two distinct options for streamlining the existing structural separation safeguard applicable to certain LECs providing wireless communications services. Under the first option, streamlined separate subsidiary provisions governing the provision of cellular service within a BOC's area of operation would remain in place temporarily, but would sunset when the particular BOC at issue receives authorization to provide interLATA service originating in any in-region state. Notice at paras. 4 and 79. Under this proposal, the Commission would continue its prohibition of a BOC cellular affiliate having an ownership interest in landline facilities that the affiliated LEC uses to provide LEC service, except that the cellular affiliate could own landline facilities for the provision of competitive landline local exchange service ("CLLE").

In view of the requirements imposed by Section 601(d) of the 1996 Act that a LEC be permitted to jointly market and resell the cellular service of its separate subsidiary, the Commission sought

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4/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56 (1996) (the "1996 Act").

5/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(A), §6002(b)(2)(B), 107 Stat. 312, 392 (1993). (The "Budget Act".)

specific comment on (a) whether integrated provision of resold cellular and landline service would raise anti-competitive concerns and (b) how should the associated treatment of Customer Proprietary Information and Network Information ("CPNI") be handled. Id.

Under the second option, the Part 22 cellular separate subsidiary requirements would be eliminated immediately for in-region cellular services and replaced by certain uniform safeguards that would apply to the provision of PCS service, and potentially all other CMRS service. Notice at paras. 5 and 82. The non-structural safeguards included in this second option emanate directly from a plan submitted by PacTel.[6/] Here, the requirements for separate operation, officers and personnel, and for arm's-length transactions between BOCs and cellular affiliates would be eliminated immediately, although the parties would still be subject to Part 64 cost allocation rules. Id.

Significantly, the Commission also sought comment with respect to its proposed set of streamlined competitive service safeguards for the in-region provision of PCS and other CMRS by Tier 1

6/ The PacTel plan as proposed consisted of five principal parts: (1) establishment of a non-structurally separate affiliate for corporate purposes only; (2) reliance on existing Part 32 and 64 accounting safeguards, as incorporated into its LEC's cost accounting manuals (CAMs); (3) compliance with established interconnection obligations; (4) voluntary compliance with the Commission's Computer III CPNI rules; and (5) voluntary compliance with the Commission's Computer III network disclosure rules. Notice at Para. 101.

LECs[7/] which is based on the plan submitted by PacTel specified in Option 2 above. Notice, at para. 90.

III. THE COMMISSION MUST PRESERVE CURRENT STRUCTURAL SEPARATION TO MAINTAIN COMPETITIVENESS

The most straightforward and persuasive arguments in support of the need for a continuing requirement for structural separation lie in recent Congressional mandates, included in the 1996 Act. Structural separation is a condition to BOC entry into certain other competitive communications fields. For example, Sections 271 (BOC InerLATA Entry); 272 (BOC Separate Affiliate; Safeguards, includes organization of In-region InterLATA services, Manufacturing, and Inter LATA Information services); 273 (Manufacturing by BOCs); and 274 (Electronic Publishing by BOCs), 47 U.S.C. §§271-73, all require separate subsidiaries. And the 1996 Act generally instructs the Commission to develop appropriate regulations to ensure against cross-subsidies where the LEC entity is providing assets or services to, or purchasing assets or services from, its nonregulated affiliate See Sections 272(c)(2) and 274(b)(3) and (4), 47 U.S. C. §§272(c)(2) and 274(b)(3)-(4). Equally persuasive, the Commission pronouncements in the Notice that certain of the core bases that initially lead to the structural separation mandate remain--or have intensified. In the

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7/ Tier 1 LEC refers to those carriers with over $100 million in revenues from regulated telecommunications operations that are subject to CAM filing requirements under Section 64.903. Although the focus of CMT comments is on BOCs, CMT will leave it to the Commission to determine if it wants to implement parity by imposing the same obligations to Tier 1 LECs.

Notice, the Commission expressly found that "the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable, and is likely to remain so until the sweeping market entry and interconnection changes authorized by the 1996 Act have taken hold". The Congressional mandate included in Section 332 of the Act for regulatory parity necessarily requires that structural separation apply to broadband PCS as well as cellular. Accordingly, CMT's argument in support of the continuation and expansion of a structural separation requirement appropriately starts with a brief review of relevant Congressional and Commission actions.

A. The Existing Record and Applicable Congressional Mandates Demonstrate the Appropriateness of Structural Separation Safeguards

1. Cellular Structural Separation Safeguards

Pursuant to Section 22.903 and its predecessor, Section 22.901, the Commission has long required BOCs to provide cellular service through structurally separate subsidiary corporations, whereas all other LECs may provide cellular service on an unseparated basis.[8/] In adopting these limited restrictions, the Commission properly recognized that BOC's will have the potential

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8/ Section 22.903 essentially consists of two parts: the requirement that BOCs provide cellular service through a separate corporation; and a series of restrictions on the operation of that separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service.

to inter alia, misallocate shared costs between wireless and wireline service, and thereby frustrate the Commission's aims for wireless.[9/] The Commission understood that one method to safeguard against these concerns without prohibiting outright wireline entry would be to impose requirements that certain BOCs operate cellular only through a separate subsidiary.[10/]

In determining to establish a structural separation safeguard, the Commission found that the benefits of such separation vastly outweighed the lone material "cost", i.e., preclusion of some unquantified joint economies of scope. Id. The meaningful corresponding benefits that the Commission recognized include the following: (a) structural separation may encourage competitive entry by reducing the possibility that wireline carriers will behave anticompetitively; (b) complete corporate separation between wireline and cellular entities can frustrate the achievement of

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9/ Cellular Communications Systems, 86 FCC 2d 469, 493-494 (1981), modified, 89 FCC 2d 58 (1982), further modified, 90 FCC 2d 571 (1982), appeal dismissed sub nom., United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

10/ The concept of structural separation was not new, even upon the advent of cellular. Rather, as the Commission properly observed when establishing this safeguard:

> The imposition of this form of structural regulation on established carriers is a direct result of policies of the last decade encouraging entry of new firms into various telecommunications markets. See, e.g., Specialized Common Carrier Service, 29 FCC 2d 870 (1971), aff'd sub nom., Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 & U.S. 836 (1975).

anticompetitive strategies because it may, at the margin, imply just enough risk of regulatory exposure to deter such behavior and (c) a separate wireless entity greatly simplifies the opportunity of other wireless operators to obtain equitable interconnection rights by among other things, reducing the opportunity that "technical complexity" or similar reasons could be invoked by wireline carriers as a basis for denying desired interconnection. Id.

2. Broadband PCS Safeguards

When the Commission addressed the issue of a possible separate subsidiary requirement for the provision of Broadband PCS service by LECs, it declined to establish any such requirement on the general theory that to impose such a requirement "may" disrupt "economics of scope" that would otherwise exist. Second Report and Order in Gen. Docket No. 90-314, 8 FCC Rcd 7700 (para. 126) (1993). Moreover, the Commission asserted, without supporting explanation, that the safeguards established to prevent cellular carriers from frustrating Commission PCS policies should also be sufficient to protect against LEC abuse. Id. This issue has resurfaced by virtue of the general inquiry presented in the Notice.

3. The Cincinnati Bell Proceeding

The Commission has recently received the benefit of substantial comment on the need for structural separation of BOC/wireless operations in the context of the Cincinnati Bell remand (as well as in certain BOC requests for waiver of the structural separation rules). The focal argument presented in opposition to the BOC requests for relief from in-region structural separation safeguards was that, notwithstanding advances in the level of competition in any telecommunications fields, generally, there has been no meaningful increase in competition in the provision of local exchange service. See Notice, at para. 28-29. Thus, safeguard proponents have argued, there is no reason to alter existing safeguards. In affirmative support of the general need for competitive safeguards, commenters explained the continuing need for wireless carriers to enter into numerous agreements with LECs addressing such matters as mutual exchange of traffic, equipment location and the sharing of network functionalities. Id. Finally, they point to the need for BOCs that request relief from structural separation obligations to quantify and support the claims of cost savings and efficiencies that would accrue from grant of such relief. Id.

4. Congressional Mandates for Structural Separation

Recent consideration of the use of separate subsidiaries has not been limited to the Commission. In the 1996 Act, Congress imposed structural separation requirements governing a number of different BOC activities.[11/] Thus, it is beyond question that

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11/ New Section 272 of the 1934 Act imposes a separate subsidiary requirement on BOC provision of both in-region interLATA services and interLATA information services. See, 47 USC §272. Under this section, a BOC's separate affiliate must operate independently from the BOC, with separate officers, directors and employees; maintain separate books, records and accounts; and conduct all transactions with the BOC on an "arm's length basis." The separate subsidiary requirement sunsets with respect to in-region interLATA services three (continued...)

Congress has recently determined that structural separation is a viable safeguard for BOCs entering into certain competitive areas. The Commission should be cognizant of this Congressional disposition as it weighs the public interest costs and benefits associated with structural separation.

5. **Recent FCC Pronouncements Regarding the Need for Competitive Safeguards**

In the Notice, the Commission affirmatively has found that, since the initial imposition of the BOC cellular structural separation requirement, the market power of the BOCs "has remained relatively stable, and is likely to remain so until the sweeping market entry and interconnection changes authorized by the 1996 Act have taken hold". Notice, at para. 42. The Commission further found that, "because PCS is likely to be competitive with both

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11/ (...continued)
years after the BOC is authorized to provide such services. With respect to interLATA information services, the separate subsidiary requirement ceases to apply four years after the date of enactment of the 1996 Act.

Pursuant to Section 273, a BOC or a BOC affiliate will be permitted to engage in the manufacture and provision of telecommunications equipment and the manufacture of customer premises equipment ("CPE") as soon as it receives FCC authorization to provide in-region interLATA services. The same separate subsidiary requirement applicable to BOC provision of in-region interLATA services will be applied to BOC manufacturing. Thus, all of a BOC's manufacturing activities must be conducted through a separate affiliate for three years after the BOC obtains authorization to provide in-region interLATA services. According to the legislative history of this section, the linkage between entry into manufacturing and entry into in-region interLATA services is intended to promote competition and efficiency by providing an added incentive for the BOCs to meet the interconnection requirements applicable to in-region interLATA services.

landline local exchange and incumbent cellular service, an integrated double incumbency (BOC cellular and local exchange operations) would appear to increase the incentives and opportunities of the BOC to act in an anticompetitive manner". Id., at para. 49. Under these circumstances, it would seem that structural separation is absolutely warranted absent there being some alternative, superior safeguard.

B. Review of Governing Statute and the Applicable Record Evidences the Need for Continuation and Expansion of Structural Separation Requirements

As set forth above, certain of the core bases for the Commission's initial determination to implement structural separation requests remains in place. Chief among these are the anticompetitive nature of local exchange service and the inequality of position between LECs and wireless carriers. (See Sections III(A)(2) and III(A)(3), supra.) The Commission has recently reaffirmed that LEC operations have not become competitive and that, with the advent of Broadband PCS being provided by BOCs, the incentives for mischief, against which structural separation is a safeguard, will only magnify.[12/]

The anticompetitive concerns against which structural separation could provide protection are not imagined or theoretical. BOCs have had the opportunity to establish massive

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12/ As The Commission observed in its Notice, at para. 37, structural separation requirements serve to protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service, as well as to prevent discriminatory interconnection practices and inappropriate leveraging of a dominant LEC position in the wireless markets.

operations, with the benefit of virtually guaranteed revenue from the provision of monopoly services. They also have had an opportunity to establish considerable data bases involving high amounts of customer information, much of which is proprietary in nature. Were the BOCs able to take advantage of these resources that were developed by virtue of monopoly operations, they would have an enormous advantage vis-a-vis their wireless competitors. Combining operations would provide economies of scale not available to their competitors. Unrestricted use of CPNI would provide unwarranted marketing advantages not available to their competitors.

Were this in and of itself not enough to justify extension of the structural separation requirement--and CMT submits that it is--Congress in its promulgation of the 1996 Act has signaled, in unmistakable terms, the general appropriateness of utilizing structural separation as a pro-competitive safeguard. See n. 12, supra, where several of the instances where structural separation was recently mandated are set forth. CMT submits that comparison of the matter now before the Commission with those for which Congress has recently mandated structural separation demonstrates beyond question that Congress would view structural separation as here being appropriate.

C. In the Absence of Structural Separation, Other Safeguards Would be Inadequate to Facilitate Competition

The Commission's second option ("Option 2") consists only of non-structural safeguards. The focal difference in the two options specified by the Commission is that only under Option 2 is integrated management and shared personnel for BOC incumbent local exchange and BOC incumbent wireline cellular operations permitted. (Under Option 1 on an in-region basis, the BOC cellular affiliate must remain an independently managed and operated company with separate officers and personnel as required by Section 22.903.) Also, Option 2 would eliminate the requirement of arm's-length transactions between the BOC and its cellular and PCS/wireless affiliates.[13/]

Two professed benefits of Option 2 are (a) enhanced regulatory parity and (b) removal of intrusive requirements that "may" not be necessary in competitive environment. Notice, at para. 82. CMT submits that neither of these professed benefits is "real" and, most certainly, neither even addresses the most relevant question before the Commission: Absent structural separation, is it realistic to expect genuine and fair competition between BOCs (and Tier 1 LECs) and other wireless carriers?

1. Structural Separation Enhanced Regulatory Parity

CMT submits that, to the extent that the regulatory parity argument is based upon a concern that LECs subject to the requirement may be at a disadvantage relative to their non-LEC competitors in the same wireless service, no genuine issue can be heard to exist. On its face, regulatory parity is relevant only

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13/ Such transactions would still be subject to Part 64 cost allocation rules.

when the parties at issue are "similarly situated".14/ Since the structural separation requirement at issue would apply only to those parties who otherwise would be in a highly advantageous position, this requirement serves to create overall parity rather than to decrease it.

To the extent argument is made that regulatory parity would be violated were structural separation to be applied to cellular but not Broadband PCS providers, CMT concurs. Yet CMT submits that the cure for any lack of parity would not be to remove structural safeguards for both cellular and Broadband PCS, but rather to extend the safeguard to both services, for all BOCs and Tier 1 LECs.

2. Structural Separation is Both Necessary to Foster Competition and No More Intrusive than a Multitude of Other Commission Requirements that Are Subject to Sunset Provisions

The Commission, in its Notice at para. 82, evidenced a proper concern that any governmentally imposed obligation not be overly intrusive. CMT applauds the Commission's mind set but submits that structural separation is so necessary to foster competition that, almost by definition, it is not overly intrusive. And most certainly it is not overly intrusive if measured against the several other interim requirements already promulgated by the Commission.

14/ See 47 USC §332, and the Commission's Second CMRS report and Order, 9 FCC Rcd 1411, 1418 (1994).

As CMT has already chronicled many of the reasons why structural separation is necessary (and thus presumably not "overly intrusive"), it will not discuss them again here. Brief comment on the relative intrusiveness of structural separation requirement does, however, appear appropriate. To CMT's knowledge, the Commission has recently promulgated and affirmed at least the following special obligations or requirements for LECs and CMRS carriers, each of which is designed to foster competition or otherwise further the public interest in one fashion or another:

- An interconnection obligation
- A resale obligation
- A CMRS spectrum cap
- E911 obligations
- RF emission protections
- Caller ID obligations
- Universal Service obligations

Each of the above requirements serves the public interest without imposing undue obligation of any carrier. CMT submits that the structural separation urged herein does the same.

D. Structural Separation is Essential to Assure that BOC Use of Existing CPNI Does not Thwart Competition in the Provision of Wireless Communications

In a separate proceeding, the Commission recently concluded that the self-executing provisions of the new Section 222 do not prohibit the Commission from enforcing requirements that are not inconsistent with the new CPNI requirements of the 1996 Act.[15/] Towards that end, in the Notice the Commission sought comment with

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15/ See Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221 (rel. May 17, 1996).

respect to whether the existing CPNI provisions of Part 22 of the rules is inconsistent with the new Section 222. Notice, at para. 72.

The Commission also sought inquiry with respect to whether it should require "any particular BOC organizational structure or procedures to guard against unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services". Id., at para. 73.

CMT submits that the issue of any potential conflict between existing rule Section 22.903 and the newly adopted Section 222 of the Act is ministerial, at most. Accordingly, CMT submits that non-substance additional revisions to Section 22.903 that would provide customers with greater express flexibility with respect to release of selected CPNI should remove entirely any issue that otherwise would be perceived to exist here.

The far more significant issue involves the establishment of appropriate safeguards to protect against the unauthorized disclosure of CPNI. CMT submits that the appropriate safeguard is structural separation. This safeguard is necessary for a number of independent reasons, as discussed in Sections III A and B herein, and thus could be implemented without creating any additional obligation on BOC wireless providers. When combined with those provisions to be adopted in the separate CPNI rulemaking, this should assure both appropriate privacy safeguards for customers and the "equal playing field" that both Congress and the Commission have deemed to be necessary for effective wireless competition.

E. CMT Supports Several of the Commission's <u>Proposed Miscellaneous Safeguards</u>

CMT supports the Commission's proposals to limit any joint marketing be done on behalf of the separate affiliate, subject to the Commission's affiliate transaction rules and classified as a nonregulated activity, on a compensatory, arms-length basis. <u>Notice</u> at para. 64. Further, CMT agrees that all transactions be reduced to writing and made available for public inspection consistent with Section 272(b)(5) of the 1996 Act.

With respect to the ability to resell cellular service, CMT favors the Commission's proposal to mandate public disclosure of rates, terms and conditions of service in cases where the LEC is reselling its cellular affiliate's service (<u>Notice</u> at para. 67).

The Commission should also implement appropriate measures to guard against the unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services. <u>Notice</u> at para. 73.

The Commission proposes to sunset the effectiveness of the Section 22.903 requirements for a particular BOC in tandem with that BOC's receipt of authorization pursuant to Section 271(d) to provide interLATA service originating in any in-region state. CMT supports this measure because the BOC would have to have completed a competitive checklist which would result in sufficient protection from interconnection discrimination and monopoly leveraging such that the structural separation requirements can be sufficiently relaxed.

IV. CONCLUSION

CMT compliments the Commission for initiating this rulemaking proceeding. Ultimately, it should foster a truly level playing field for CMRS competition. CMT supports generally the Commission's proposal to retain the structural separation safeguards of Section 22.903 as provided for in Option 1, and to expand them as set forth herein. CMT also urges the Commission not to accept the unfounded argument that competition can be properly fostered without interim structural separation.

Respectfully submitted,

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October 3, 1996

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have, on this 3rd day of October, 1996, had hand delivered copies of the foregoing "COMMENTS OF BACTC PARTNERS" to the following:

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